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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1322nd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 12 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1322/Add.1.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Twelfth to fifteenth periodic reports of Costa Rica (continued) (CERD/C/338/Add.4)

1. At the invitation of the Chairman, the members of the delegation of Costa Rica resumed their places at the Committee table.

2. The CHAIRMAN invited the members of the Committee to put additional questions to the delegation of Costa Rica.

3. Mr. GARVALOV said he agreed with other members of the Committee that the oral presentation of the head of the Costa Rican delegation was at least as important as the written report itself.

4. He noted that, according to paragraph 5 of the report (CERD/C/338/Add.4), it was "an absolute imperative in the Costa Rican legal system that persons who are in similar situations must receive equal treatment" and that "the rule was to be understood as making it a requirement to treat equally all persons who belong to a particular category and are in an equivalent situation". He wondered what exactly was meant by the term "category" and whether the legislation of the State party guaranteed equal treatment to all citizens regardless of the "category" to which they belonged.

5. Likewise, in the last sentence of paragraph 76, the accepted meaning of the term "country" was unclear. Did the term refer to the constitutional legislative, judicial and executive branches, and did it mean that those authorities had ascertained that there was no discrimination or that they had affirmed that there was none?

6. He found an inconsistency between the wording of paragraphs 84, 88 and 90 of the report, which said that the law penalized ("sanciona") any form of racial discrimination, and that of paragraph 89, which said that the law discouraged ("desestimula") any racial segregation.

7. Mr. SHERIFIS said that the oral presentation of the head of the Costa Rican delegation could in essence be considered a supplementary report.

8. Concerning Act No. 4430 of 21 May 1968 cited in paragraph 89 of the report, which made the offence of segregation punishable by a fine, he wondered if action had been taken to compensate for the fact that the amount of the fine had become insignificant because of monetary fluctuations.

9. He would like to have further information on the question of refugees, dealt with in paragraphs 9 to 17 of the report, given the number of refugees and therefore the magnitude of the problem. His concern was that the refugees were subjected to racial discrimination on the part of the population, given the popular belief, referred to in paragraph 10 of the report, that there was an "ethnic difference" between Costa Ricans and other Central Americans. What were the authorities doing to combat that prejudice?

10. He was also surprised that Costa Rica had not given details about the implementation of article 7 of the Convention, as requested during the consideration of the previous report. He would appreciate information on steps taken by the Government to mobilize public opinion and promote the objectives of the Convention.

11. He asked if Costa Rica had ratified the amendment to article 8, paragraph 6, of the Convention and, if not, if it intended to do so.

12. The CHAIRMAN said that he took it the members of the Committee had no more questions to ask and invited the Costa Rican delegation to take the floor.

13. Mr. DIAZ-PANIAGUA (Costa Rica) agreed that there was some awkward wording in the report. However, his oral presentation had enabled him to clarify certain points.

14. Regarding Mr. Sherifis' question on what had been done to compensate for the weakening of the penalty stipulated for acts of racial segregation, article 371 of the Criminal Code provided for fines that varied according to the income of the perpetrators and certain economic indicators such as the current minimum wage. Furthermore, if the accused owned a business, the judge could order the establishment to be closed down. It could therefore be said that the law effectively punished acts of racial discrimination.

15. In answer to Mr. de Gouttes' question whether there were any legal texts penalizing participation in international organizations that advocated recourse to acts of racial discrimination, he indicated that under article 372 of the Criminal Code, any person who participated, as a leader or a member, in activities of an international organization that engaged in acts contrary to the provisions of the international treaties to which Costa Rica was a party was subject to 15 to 20 years' imprisonment. However, to his knowledge, no case had been brought on those grounds during the period under consideration.

16. He agreed that the report was silent on the implementation of article 7 of the Convention. Some attempts at implementation had been made, in collaboration with governmental and non-governmental organizations, in certain regions. Programmes had been set up by the Department of Indigenous Education, to teach cultural diversity.

17. In answer to Ms. Sadiq Ali who had inquired about the status of the proposed Act for the Autonomous Development of the Indigenous Peoples, it was making headway and the prospects for its adoption were reportedly good.

18. Regarding Mr. Yutzis' question concerning the case of Mrs. Zelaya and her two daughters referred to by Amnesty International, he explained that Mrs. Zelaya had entered Costa Rica in February 1996 with her children and had obtained refugee status. In September 1996, she had submitted a complaint to the Office of the Ombudsman on the grounds of harassment and threats by Honduran security forces operating on Costa Rican territory. An inquiry had been conducted and concluded without uncovering any evidence to support the complaint. Eight days after the complaint had been filed, the Special

Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions had addressed a letter to the Costa Rican authorities informing them that Mrs. Zelaya was filing a complaint against the Government of Costa Rica. Shortly thereafter, Mrs. Zelaya had left the country for Europe. In the event, his Government had given refuge to Mrs. Zelaya out of purely humanitarian considerations, and there was no compelling evidence that she had been a victim of racial discrimination.

19. In answer to another question by Mr. Yutzis concerning the delegation's statement that views differed among the organizations working to defend the indigenous people and among the various groups claiming to represent them, he said that the delegation had, in the interest of transparency, wanted to inform the Committee about a situation that did not facilitate the implementation of the Convention. There had in fact been disputes among indigenous groups and associations over contested appointments of tribal chiefs. Also, in 1997, the National Indigenous Affairs Commission (CONAI) had submitted a case to the Constitutional Court, accusing the executive branch of wanting to stifle it and do away with it. The Ministry of Culture for its part had accused CONAI of being unrepresentative, acting without a clear strategy and wasting the funds at its disposal. Similarly, the Supreme Electoral Tribunal had spoken of a "sabotage" of the electoral process.

20. All those disputes were before the courts, but since it represented the Government, the delegation was not in a position to speak in favour of one or the other side. It was best to allow the disputes to be settled democratically while ensuring that indigenous rights were respected.

21. As to the role of the Constitutional Court, it had several methods of determining whether or not the cases brought to it involved racial discrimination. However, in matters having to do with the rules of judicial proceedings such as the burden of evidence or the presumption of innocence, the Court, as an independent body, fully observed the basic principles of the law.

22. Concerning Mr. Sherifis' comments about the superiority that Costa Ricans felt with regard to other Central American peoples, that was a fact, and the State had taken steps in that regard, especially by launching awareness campaigns.

23. That said, it should be noted that despite the attitude of the population, Costa Rica had welcomed many immigrants throughout its history and made it relatively easy for them to obtain citizenship.

24. At any rate, important changes were taking place that were transforming the situation in positive ways.

25. Mr. GUILLERMET (Costa Rica), answering questions about the situation of the indigenous population of Costa Rica, said that the Office of the Ombudsman believed that the question of land tenure was the most acute problem facing the indigenous peoples of Costa Rica. A project to recover indigenous land had been assigned to institutions reporting to CONAI, which could, in particular, finance expropriations on behalf of indigenous people. Its

treasury had been empty for three years, but while it awaited renewed funding, CONAI was engaged mainly in assessing the value of the land to be redistributed to the indigenous communities.

26. According to figures published by CONAI in 1990, the proportion of indigenous landowners ranged from 80 to 100 per cent in eight zones situated in the indigenous reservations of the Atlántica region. More recent figures indicated that 15 per cent of the lands in the indigenous reservations were still in other hands. There were plans to launch a major project for the autonomous development of the indigenous population, which would include a special fund to finance expropriations. CONAI had in 1995 had a budget of over 150 million colones (1 million United States dollars) for the buy-back of land situated in indigenous reservations. In its budget for the period 1996-1997, the Institute for Agrarian Development had allocated 24 million colones for the purchase of such lands. No cut-off date had been set for the expropriations.

27. With reference to education, CONAI had calculated that there were 5,123 pupils attending 119 schools in 1997. Since then, 28 new schools had been opened, with 5,397 pupils and 243 bilingual teachers. Note should be taken of a bill to expand the Department of Indigenous Affairs within the Ministry of Public Education, which had been set up within the framework of the National University. The Department was operating a training programme for specialists and teachers of indigenous origin that was based on the culture and thinking of the indigenous communities.

28. The Government was endeavouring to protect the indigenous reservations by declaring that they constituted inalienable community lands, with a view above all to preventing their use as collateral by financial institutions. In order to help indigenous producers to obtain loans, it applied the law on the autonomous development of indigenous populations and especially the law on cooperatives, which promoted the organization of community cooperatives to improve access to credit. Other agricultural development projects aimed to help indigenous producers to buy farm machinery, especially through the special financing fund set up mainly to grant loans to indigenous communities.

29. Concerning welfare benefits, indigenous producers were not covered by an autonomous regime since the State had a monopoly over social security in Costa Rica. They could, however, join the national system through their cooperatives.

30. With regard to the armed group of public security officers whose members had killed several indigenous people in the Talamanca region, those guilty had been brought to trial and sentenced to from 3 to 42 years' imprisonment.

31. In the area of health, the main difficulties stemmed from the isolation of the communities living in the indigenous reservations. To remedy the situation, the health authorities were operating a programme to expand basic health care by bringing the health centres and health workers closer to the indigenous communities. A training programme in a combination of traditional and Western medicines had been set up in the communities.

32. Regarding the publicity given to the Convention, the Office of the Ombudsman, which received and reviewed complaints concerning human rights violations submitted by both Costa Rican citizens and any individuals living in Costa Rican territory, was also responsible for publicizing the provisions of the Convention and for promoting a culture of respect for human rights. It worked together with the National Commission for the Administration of Justice and the Constitutional Court on programmes to promote the principle of equality set out in article 33 of the Constitution.

33. Mr. PENROD (Costa Rica), replying to a question by Mr. Yutzis about access for immigrants to basic health services, said that the health system was one of the key factors of human development in Costa Rica. Essential services (distribution of medical supplies, emergency care, hospitalization) were administered by the National Social Security Fund, to which all workers, whether immigrants or not, were obliged to contribute. Foreigners in an irregular situation could, if they were wage-earners or self-employed, join that scheme if they so wished by making contributions proportional to their income. The State undertook to provide basic health and emergency care to persons with low incomes and to all needy immigrants and their families.

34. He stressed the principle that any child born on territory of Costa Rica automatically acquired the nationality of the country, regardless of that of its parents or of their immigrant status. The same applied to children of unknown parentage. Article 13 of the Constitution provided that a child born of foreign parents and registered as Costa Rican, at the wish of its parents while a minor or from its own choice before reaching 25 years of age, was Costa Rican by birth.

35. Regarding access to education, article 78 of the Constitution provided that primary education, as well as nursery schooling and secondary education, was obligatory and free, and to be provided by the State. According to UNDP figures, 95 per cent of the adult population was literate; education facilities were open to foreign minors with no restriction, and all children of low-income families were supported by a programme of economic assistance subsidized by the State, irrespective of nationality.

36. On the subject of ensuring publicity about immigrants' recognized rights, article 19 of the Constitution and article 64 of the General Act on Migration and Aliens provided that aliens had the same rights and duties as Costa Ricans. As a result of the forum on migrant populations organized by the Office of the People's Advocate in collaboration with the Inter-American Human Rights Institute, the World Migration Organization had recently launched an information and promotion campaign in order to inform immigrants from Central America about the conditions required in order to benefit from the amnesty proclaimed by the Costa Rican Government. The campaign had been launched in collaboration with civil society and non-governmental organizations, including CARITAS, with a view to enabling clandestine immigrants to regularize their situation. The General Department for Migration and Aliens was collaborating fully with the media in order to disseminate information about the amnesty procedures as widely as possible.

37. The Office of the People's Advocate was coordinating a standing forum on migrant populations with a view to establishing a national policy with regard

to migrants, with the participation of representatives of civil society, public institutions and migrants. It was also organizing training programmes, for members of the police forces, dealing with respect for immigrants' basic rights.

38. With regard to the deporting of aliens illegally in the country, that measure had been abrogated by the Amnesty Decree of November 1998; pursuant to the General Act on Migration and Aliens, various categories of tourist visas were issued, taking into account objective considerations such as health and security, but not national origin. There were only two persons from Sierra Leone on Costa Rican territory who had refugee status. A Costa Rican consulate had been opened in Cuba to handle visa requests by persons from that country.

39. Mr. DIAZ-PANIAGUA (Costa Rica) thanked the Committee for having allowed his delegation an opportunity to present the Costa Rican Government's policy relating to the Convention's implementation.

40. The CHAIRMAN, speaking as a member of the Committee, commended Costa Rica on its record concerning respect for human rights, which had earned it an excellent reputation in the United Nations. He recalled that Costa Rica had lobbied strongly for the creation of the post of High Commissioner for Human Rights as part of the Organization's system for upholding human rights, an initiative now welcomed by all. Costa Rica was thus particularly well placed to propose that other member States of the Human Rights Commission of the Organization of American States should consider apologizing to America's indigenous peoples, as well as to Afro-Americans, for the various forms of harm to which they had been subjected in the past. Payment of compensation could be discussed in the context of the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

41. Mr. YUTZIS (Country Rapporteur) said that he welcomed the efforts made by Costa Rica to clarify certain aspects of questions stemming from its report. Therefore, the Committee hoped that the delegation would impress upon the Government the vital importance of submitting the next periodic report on time.

42. It seemed to him that there was some imbalance, in Costa Rica, between the development evident in the country, reflected in growing GDP and falling unemployment, and the relative lack of effort made to fulfil the obligations stemming from the Convention, particularly with regard to protecting the most vulnerable population group, namely, the indigenous people.

43. Although the delegation had strongly stressed, in its oral statement, that an act on the independent development of indigenous populations was being drafted, the Committee still did not know when that text would be completed and adopted. Likewise, the delegation had stated that prison sentences ranging from 3 to 40 years had been handed down in connection with the Talamanca case; but there, too, the Committee was unaware whether the sentences were final or were subject to appeal. Costa Rica's next report should give more specific information on steps taken to implement article 4 of the Convention, which stipulated that "States parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of

one race or group of persons". In fact, article 4 condemned not only racist acts committed by individuals but also and especially those that institutions might commit.

44. The constitutionality of treating individuals differently under the law according to criteria defined by the Constitutional Court was not at issue. However, the burden of proof was perhaps not the same for all, and he wondered how some sectors of the population, especially those with neither the resources nor the experience nor the capability required, could defend themselves fairly.

45. Other questions were still pending, especially the issue of what the Government intended to do to treat the different categories of immigrants and refugees on an equal footing.

46. Mr. DIAZ-PANIAGUA (Costa Rica) said, in answer to Mr. Yutzis, that during the Talamanca trial four appeals had been rejected.

47. The CHAIRMAN said that the Committee had concluded its consideration of the twelfth to fifteenth periodic reports of Costa Rica.

48. The delegation of Costa Rica withdrew.

The public part of the meeting rose at 11.35 a.m.